

Docket No: 11934P1D1D1

Application No: 10/815,791

**I. Remarks**

The specification has been amended to reflect issuance of the parent patent application as U.S. Patent Number 6,719,943.

Claims 96 and 98-107 have been rejected in the current Office Action. Claim 96 has been canceled herein. Claims 98 and 100-103 have been amended herewith. Support for new Claims 108-109 is found in the claims as originally filed, as well as the specification. Other claim amendments were made to reflect cancellation of Claim 96 and the substitution therefor of new Claims 108-109. Claims 98 and 100-109 remain pending and are believed condition for allowance.

**II. Rejections under 35 U.S.C. § 103(a)****A. *Common Ownership Issues***

Applicants state that the subject matter of the various claims was commonly owned at the time the claimed inventions was made.

**B. *Rejection of Claims 96, 98-103 and 105-107***

Claims 96, 98-103 and 105-107 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,439,628 ("Huang") in view of Introduction to Polymers, pp. 196, 204 (1983). Claim 104 was rejected as allegedly being unpatentable over Huang, in view of Young as applied to Claims 96, 98-103 and 105-07, and further in view of U.S. Patent No. 5,001,176 ("Nakazima"). The nature of the rejections are set forth in detail in the Office Action and, as such, are not reproduced here. In view of the amendments made to the claims herein, in particular, the cancellation of Claim 96 and the addition of new Claim 108, from which all claims now depend directly or indirectly, it is respectfully stated that the claims are now allowable.

In particular, reference is made to the recitation in Claim 108 of mica. With regard to the recitation of mica in a container having similar claimed features, in the parent application, now U.S. Patent No. 6,719,943, Examiner Eashoo stated the following with regard to certain claims of that application:

The prior art of record does not teach nor render obvious the claims method of producing a mica-filled polyolefin container. Specifically, the prior art of record does not render obvious the specific use of [a] mixture of polypropylene or

Docket No: 11934P1D1D1

Application No: 10/815,791

polypropylene copolymer or a blend of polypropylene copolymer and mica in the production of microwavable containers. It is noted that although Huang teaches the possible use of mica as the filler in a polypropylene for the production of microwave containers, [Huang] teaches a preferred embodiment where calcium and/or talc are used as the filler. [Referencing page 11 of Paper # 9 of the parent patent prosecution history.] The [parent patent] claims an unexpected result of a micronodular surface, which is not taught by Huang. Although a micronodular surface would intrinsically be formed by the required heat treatment during the thermoforming of a polypropylene sheet with mica filler [referencing page 17, lines 10-22 of the as-filed specification], this unexpected result provides the unknown motivation to use mica as the filler. One having ordinary skill in the art at the time of the invention would not have recognized this unexpected result at the time of invention and thus would not have been motivated to select mica as the specific filler for microwavable container as taught by [Huang].

(See Office Action dated July 8, 2003 of U.S. Patent Application Number 09/572,967, now U.S. Patent Number 6,719,943.) (Copy attached as Exhibit A.)

Applicants respectfully state that this same rationale applies to the patentability of the claims as presented herewith which recite, *inter alia*, a container formed from a mixture of a polyolefin and mica. As such, it is contended that the claims as presented herewith are allowable in view of the previously acknowledged unexpected results of the claimed mica-filled container over Huang, whether taken alone or in combination with Young or Huang in combination with Young and Nakazima.

### III. Obviousness-Type Double Patenting Rejections

Claims 96 and 98-107 were further rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly being unpatentable over Claims 1-21 of U.S. Patent No. 6,719,943 in view of Huang and Nakazima. It is believed that this rejection would be applied to new Claims 108 and 109, also. Claims 96 and 98-107 were further rejected as allegedly being unpatentable for obviousness-type double patenting over Claims 1-11 of U.S. Patent No. 6,403,936 in view of Huang, Young and Nakazima. Again, it is believed that this rejection would be applied to new Claims 108 and 109. Still further, Claims 96 and 98-107 have been rejected as allegedly being unpatentable for obviousness-type double patenting over Claims 48-61 of U.S. Patent No. 6,100,512 in view of Huang, Young and Nakazima. It is believed that this rejection would be applied to new Claims 108 and 109, also.

Docket No: 11934P1D1D1

Application No: 10/815,791

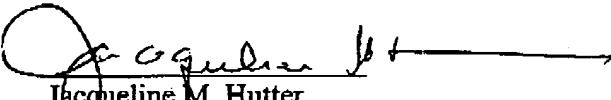
Applicants wish to hold any issues related to alleged obviousness-type double patenting in abeyance until the notification of the existence of patentable subject matter.

#### IV. Conclusion

In view of the above-presented Amendment and Remarks, it is respectfully contended that the claims are now in condition for allowance, subject to the outstanding obviousness-type double patenting rejection which is being held in abeyance. It is requested that the Examiner notify the undersigned of the presence of allowable subject matter so that the double patenting rejection might be resolved.

The Patent Office is authorized to charge \$120 to Deposit Account No. 50-0674 for the fees for the Request for One Month Extension of Time. It is believed that no further fee is required for filing this Amendment. If necessary, please charge any additional fees to Deposit Account No. 50-0674.

Respectfully Submitted,

  
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Dated: October 14, 2005**CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. §1.8**

I hereby certify that this correspondence for Application Serial No. 10/815,791 is being facsimiled to The U.S. Patent and Trademark Office via fax number 703-872-9306 on the date shown below.

WENDY LEACOCK  
Typed or Printed Name of Person SigningWendy Leacock  
SignedOctober 14, 05  
Dated

## EXHIBIT A



## UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/572,967	05/18/2000	Cristian M. Neculescu	2734,388-02	6359

22852. 7590 07/08/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER

SHIPSIDES, GEOFFREY P

ART UNIT

PAPER NUMBER

1732

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Docketed 7/11/03 Attorney LAJ/RDB  
Case 2734-388  
Due Date 10/18/03 W/EVE  
Action RESPONSE DUG  
By [Signature] 7-11-03

RECEIVED

**Office Action Summary**

Application No.

09/572,987

Applicant(s)

NECULESCU ET AL

Examiner

Geoffrey P. Shippides

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 66-95 is/are pending in the application.
- 4a) Of the above claim(s) 76-82 and 88 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 66-75, 83, 84 and 89-95 is/are allowed.
- 6) ☒ Claim(s) 85-87 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 10, 14.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

Application/Control Number: 09/572,967  
Art Unit: 1732

Page 2

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 87 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,223,194 (Rosen) in view of U.S. Patent No. 5,219,612 (Arase et al.).

Rosen teaches a process (Figure 3) where a mica-filled polyolefin (Column 4, line 3; Column 5, line 14) is extruded into a sheet (Figure 3) wherein the polyolefin is polypropylene (Column 3, lines 57-58). It is intrinsic in the process of Rosen that the mica-filled polypropylene is formed into an extrudable admixture prior to the extrusion of the material in order to allow for the layer to be extruded. It is further intrinsic that the admixture is extruded at an elevated temperature. Rosen teaches the passing of the extruded admixture through a multiple roll stack (Figure 3). It is further intrinsic that the recovered sheet of the process of Rosen would have polyolefin and mica moieties. Rosen teaches that the sheet has a grooved surface (Figures 2, 5(a), and 5(b)) on one or both sides of the resulting extruded sheet. It is noted that the examiner also interprets the limitation "rough surface" to define a textured surface. It is further intrinsic that the process of Rosen would be controlled to some extent with regard to the speed of the extrusion process, the size temperature and configuration of the rollers such that

Application/Control Number: 09/572,967

Page 3

Art Unit: 1732

the surface of said extruded admixture forms an embossed structure. Further, Rosen teaches a process where both sides of the extruded admixture are embossed (Figures 5(a) and 5(b)).

With regard to claim 87, Rosen does not specifically teach that a least one of the embossing rolls has a matte finish in order to form a matte finish on the admixture. Arase et al., however teaches a process where resin material is given a matte finish (Column 12, line 22) and teaches that such a material is useful for containers and packaging materials (Abstract, lines 19-21). Arase et al. teaches a roll with a matte-finish (Column 4, line 40). Arase et al. teaches improved pigment display with the use of the matte finish (Column 2, lines 1-5). Rosen is directed towards the production of a packaging material (title). It would have been obvious to one having ordinary skill in the art at the time of invention to modify the process of Rosen to give at least one of the embossing rolls a matte finish in order to produce a packaging material that has a matte finish and thus has the improved appearance as taught by Arase et al. It would have been obvious to one having ordinary skill in the art at the time of invention to modify the embossing roll of Rosen to have a matte surface as taught by Arase et al. included between the grooves of Rosen in order to form the packaging material of Rosen with an improved appearance. It is further noted that the surface of the material that contacts the matte finish roll of Arase et al. receives a matte finish embossment.

3. Claim 85 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,223,194 (Rosen) in view of U.S. Patent No. 5,219,612 (Arase et al.).



Application/Control Number: 09/572,967  
Art Unit: 1732

Page 4

Rosen teaches a process (Figure 3) where a mica-filled polyolefin (Column 4, line 3; Column 5, line 14) is extruded into a sheet (Figure 3) wherein the polyolefin is polypropylene (Column 3, lines 57-58). It is intrinsic in the process of Rosen that the mica-filled polypropylene is formed into an extrudable admixture prior to the extrusion of the material in order to allow for the layer to be extruded. It is further intrinsic that the admixture is extruded at an elevated temperature. Rosen teaches the passing of the extruded admixture through a multiple roll stack (Figure 3). It is further intrinsic that the recovered sheet of the process of Rosen would have polyolefin and mica moieties. Rosen teaches that the sheet has a grooved surface (Figures 2, 5(a), and 5(b)) on one or both sides of the resulting extruded sheet. It is noted that the examiner also interprets the limitation "rough surface" to define a textured surface. It is further intrinsic that the process of Rosen would be controlled to some extent with regard to the speed of the extrusion process, the size temperature and configuration of the rollers such that the surface of said extruded admixture forms a matted structure. Further, Rosen teaches a process where both sides of the extruded admixture are embossed (Figures 5(a) and 5(b)).

With regard to claim 85, Rosen does not specifically teach that a least one of the embossing rolls has a matte finish in order to form a matte finish on the admixture. Arase et al., however teaches a process where resin material is given a matte finish (Column 12, line 22) and teaches that such a material is useful for containers and packaging materials (Abstract, lines 19-21). Arase et al. teaches a roll with a matte-finish (Column 4, line 40). Arase et al. teaches improved pigment display with the use

Application/Control Number: 09/572,967

Page 5

Art Unit: 1732

of the matte finish (Column 2, lines 1-5). Rosen is directed towards the production of a packaging material (title). It would have been obvious to one having ordinary skill in the art at the time of invention to modify the process of Rosen to give at least one of the embossing rolls a matte finish in order to produce a packaging material that has a matte finish and thus has the improved appearance as taught by Arase et al. It would have been obvious to one having ordinary skill in the art at the time of invention to modify the embossing roll of Rosen to have a matte surface as taught by Arase et al. included between the grooves of Rosen in order to form the packaging material of Rosen with an improved appearance.

Rosen also does not specifically teach a process where the opposite side of the material forms the surface structure of the embossing roll, but Rosen does teach process where both sides of the mixture is embossed. It is clear from the teaching of Arase et al. that the matte finish improves the visual appearance of the material. It would have been obvious to one having ordinary skill in the art at the time of invention to apply a matte finish to both sides of the material of Rosen in order to produce a packaging material with the improved visual appearance of Arase et al. on both sides of the material. In such a process both sides of the packaging material would receive a matte finish, and thus the side of the mixture that does not contact said at least one roll with a matte finish receives a matte finish.

4. Claim 86 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,223,194 (Rosen) in view of U.S. Patent No. 5,219,612 (Arase et al.), as applied to claim 85 above, and further in view of U.S. Patent No. 3,893,795 (Nauta).

Application/Control Number: 09/572,967

Page 6

Art Unit: 1732

With regard to claim 86, Rose does not specifically teach the passing of the extrudate admixture through a curvilinear path. Nauta, however, teaches the passing of an extrudate through a curvilinear path to form the shape of the extrudate (Figure 3) so that the desired degree of tension can be maintained in the sheet (Column 5, lines 50-55). It would have been obvious to one having ordinary skill in the art at the time of invention to pass the extrudate of Rosen through a curvilinear path as taught by Nauta in the process of Rosen in order provide the proper degree of tension required for the embossing process. It is further intrinsic in the process of Rosen that the extrudate is under some tension that that the mixture of Rosen would at least partially solidify while under tension.

***Allowable Subject Matter***

5. Claims 66-75, 83-84, and 89-95 are allowed.

6. The following is an examiner's statement of reasons for allowance: The prior art of record does not teach nor render obvious the claimed method of producing a mica-filled polyolefin container. Specifically, the prior art of record does not render obvious the specific use of mixture of polypropylene or polypropylene polyethylene copolymer or a blend of polypropylene and polypropylene polyethylene copolymer and mica in the production of microwavable containers. It is noted that although Huang teaches the possible use of mica as the filler in a polypropylene for the production of microwave containers, Huang teaches a preferred embodiment where calcium and/or talc are used as the filler (See page 11 of Paper # 9). The instant applicant claims an unexpected

Application/Control Number: 09/572,967  
Art Unit: 1732

Page 7

result of a micronodular surface, which is not taught by Haung. Although a micronodular surface would intrinsically be formed by the required heat treatment during the thermoforming of a polypropylene sheet with mica filler (See Page 17, lines 10-22 of the instant specification), this unexpected result provides the unknown motivation to use mica as the filler. One having ordinary skill in the art at the time of invention would not have recognized this unexpected result at the time of invention and thus would not have been motivated to select mica as the specific filler for microwavable container as taught by Haung.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 5,968,431 (Ang et al.), U.S. Patent No. 6,340,530 B1 (Porter et al.), U.S. Patent No. 6,024,907 (Jagunich), U.S. Patent No. 5,156,790 (Cucchisi et al.), U.S. Patent No. 5,843,260 (Huskey), U.S. Patent No. 4,311,658 (Nicoll), U.S. Patent No. 4,929,474 (Avni et al.), and U.S. Patent No. 5,582,670 (Andersen et al.) are cited as art of interest to show the current state of the art at the time of invention.

Application/Control Number: 09/572,967  
Art Unit: 1732

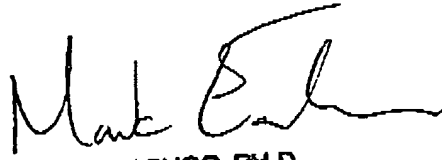
Page 8

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geoffrey P. Shipsides whose telephone number is 703-306-0311. The examiner can normally be reached on Monday - Friday 9 AM till 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Geoffrey P. Shipsides/gps  
June 30, 2003

  
MARK EASHOO, PH.D  
PRIMARY EXAMINER  
Art Unit 1732  
30/Jul/03

**Notice of References Cited**Application/Control No.  
09/572,967Applicant(s)/Patent Under  
Reexamination  
NECULESCU ET ALExaminer  
Geoffrey P. ShipsidesArt Unit  
1732

Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,223,194	05-1993	Rosen, Ake	264/46.1
	B	US-3,893,795	07-1975	Nauta, Jan P.	425/403
	C	US-5,968,431	10-1999	Ang et al.	264/171.26
	D	US-5,582,670	12-1996	Andersen et al.	156/242
	E	US-5,219,627	06-1993	Arase et al.	428/35.7
	F	US-4,929,474	05-1990	Avni et al.	427/326
	G	US-4,311,658	01-1982	Nicoll, Frank D.	264/175
	H	US-5,843,260	12-1998	Huskey, Richard A.	156/153
	I	US-5,156,790	10-1992	Cucchisi et al.	264/176.1
	J	US-6,024,907	02-2000	Jagunich, Bruce Frank	264/284
	K	US-6,340,530 B1	01-2002	Porter et al.	428/474.4
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(e).)  
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office  
 PTO-892 (Rev. 01-2001)

Notice of References Cited

Part of Paper No. 15